

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

DECISION AND ORDER
09-CR-38S

MICHAEL MORRIS,

Defendant.

1. Presently before this Court is Defendant's Motion for Release pending sentence. (Docket No. 140.) On August 26, 2011, Defendant was convicted after trial of possession with intent to distribute crack cocaine, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C), and maintaining a drug-involved premises, in violation of 21 U.S.C. § 856(a)(1). He was acquitted of two firearms offenses.

2. Detention pending sentence is governed by 18 U.S.C. § 3143, which, with certain exceptions, requires that an individual found guilty of an offense and who is awaiting imposition or execution of sentence be detained, unless the court finds by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released. 18 U.S.C. § 3143(a)(1).

3. A different standard applies to individuals convicted of certain crimes set forth in 18 U.S.C. § 3142(f)(1)(A)-(C). Those individuals must be detained unless the court finds (1) that there is a substantial likelihood that a motion for acquittal or new trial will be granted, or (2) that the government recommends that no sentence of imprisonment be imposed, and (3) that clear and convincing evidence establishes that the person is not likely to flee or pose a danger to any other person or the community. 18 U.S.C. § 3143

(a)(2).

4. Here, there is no showing, let alone a substantial likelihood, that a motion for acquittal or new trial will be granted. In addition, the government is not recommending a non-incarceration sentence. To the contrary, the government has calculated Defendant's advisory guideline range as 78-97 months, and it intends to advocate for imposition of a sentence within that range. The threshold requirements for release pending sentence under 18 U.S.C. § 3143(a)(2)(A) have therefore not been met. Moreover, this Court finds no exceptional reasons why Defendant's detention is not appropriate, and thus his request for release under 18 U.S.C. § 3145(c), which provides for release on conditions notwithstanding the provisions of 18 U.S.C. § 3143(a)(2), is denied.

IT HEREBY IS ORDERED, that Defendant's Motion for Release pending Sentence (Docket No. 140) is DENIED.

Dated: September 8, 2011
Buffalo, New York

s/William M. Skretny
WILLIAM M. SKRETNY
Chief Judge
United States District Court